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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,529	03/19/2004	Patrick Crosbie	280-2	7554
24336 7590 08/15/2007 KEUSEY, TUTUNJIAN & BITETTO, P.C. 20 CROSSWAYS PARK NORTH SUITE 210 WOODBURY, NY 11797			EXAMINER LE, MARK T	
			ART UNIT 3617	PAPER NUMBER
			MAIL DATE 08/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/804,529

Applicant(s)

CROSBIE ET AL.

Examiner

Mark T. Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/29/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 5, 9, 12, 14, 21, 24, 26-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8, 10, 11, 13, 15-20, 22, 23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the amendments filed on June 29, 2007.

Applicant's amendments and remarks have been carefully considered.

2. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nijenhuis (US 6,401,624) in view of Coslovi (US 5,743,191).

Nijenhuis discloses a portable platform structure similar to that recited in the instant claims, including platform 15, a trolley under the portable platform including wheels 16, and suspension system 17, which includes pneumatic means to allow adjustment and positioning of the portable platform.

Regarding the instant claim safety fence, it is noted that safety fences provided on railway cars are well known. Note for example, safety fence 110 or 112 of Coslovi. Therefore, it would have been obvious to one skilled in the art to provide a well known safety fence on the railcar of Nijenhuis at the end thereof, for example similar to that of Coslovi, so as to provide operator safety during inspecting a load container on the railcar.

Regarding the instant claimed intended use for permitting pedestrian traffic and providing pedestrian safety, note that since the structure of Nijenhuis, as modified, is inherently capable of the instant claimed intended use, the instant claimed intended use limitation is considered met.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Hogue (US 4,224,880).

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Regarding the instant claimed portable platform including planks, as recited in instant claim 8, consider railcar floor of Hogue, which is formed by planks. In view of Hogue, it would have been obvious to one skilled in the art to form the portable platform (floor) structure of Nijenhuis by using planks, in a manner similar to that taught by Hogue, so as to achieve the expected advantages thereof.

4. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Farmer (US 1,980,329).

Regarding the instant claimed braking system, as recited in instant claim 13, it is noted that Nijenhuis does not show a braking system; however, braking system for use in a rail traveling structure is well known. Note for example, the rail wheel brake system shown in Farmer. Therefore, it would have been obvious to one skilled in the art to include a braking system, as for example shown in Farmer, in the structure of Nijenhuis so as to perform the expected braking function thereof.

5. Claims 7 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Fowler (US 2,190,708).

Regarding the instant claimed extendable ramp, as recited in instant claim 7, consider the extendable ram of Fowler. In view of Fowler, it would have been obvious to one skilled in the art to also include extendable ramps, similar to that of Fowler, on the structure of Nijenhuis so as to allow the portable platform to bridge gaps in situations where a permanent platform, similar to that shown in Figure 2 of Fowler, is located at a distance from the portable platform.

Regarding the instant claimed railings, as recited in instant claims 10-11, consider Figure 5 of Fowler; wherein, the ramps of Nijenhuis, as modified, are positioned vertically as railings as required by the instant claims.

6. Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Coath (US 701,469).

Regarding the instant claimed steering mechanism, as recited in instant claim 6, consider the steering mechanism Coath in the form of a pivot. In view of Coath, it would have been obvious to one skilled in the art to include a steering mechanism, similar to that taught by Coath, in the structure of Nijenhuis so as to allow the rail traveling structure to negotiate track curves.

7. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nijenhuis (US 6,401,624) in view of Coslovi (US 5,743,191) and Coath (US 701,469).

Nijenhuis discloses a portable platform structure similar to that recited in the instant claims, including platform 15, a trolley under the platform including wheels 16, and suspension system 17, which includes pneumatic means to allow adjustment and positioning of the platform.

Regarding the instant claimed portable platform being self-supporting and independent from the permanent platform, as recited in instant claims 15-18, it is noted that the portable platform of Nijenhuis is inherently capable of self-supporting and independent from a permanent platform that does not have support elements 11 attached to the sides of the permanent platform. On the other hand, it is noted that support elements 11 of Nijenhuis are provided for added enhancement of vertical

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stability of the portable platform during loading of a heavy load container onto the portable platform. However, it certainly would have been obvious to one skilled in the art to choose not to provide such support elements 11 at permanent platforms for operating with light loads, such that the use of such support elements 11 is not critical for maintaining vertical stability of the portable platforms during loading of a light load.

Regarding the instant claim safety fence, it is noted that safety fences provided on railway cars are well known. Note for example, safety fence 110 or 112 of Coslovi. Therefore, it would have been obvious to one skilled in the art to provide a well known safety fence on the railcar of Nijenhuis at the end thereof, for example similar to that of Coslovi, so as to provide operator safety during inspecting the load containers on the railcars.

In Coath, a steering mechanism in the form of a pivot is provided, and it would have been obvious to one skilled in the art to include a steering mechanism, similar to that taught by Coath, in the structure of Nijenhuis so as to allow the rail traveling structure to negotiate track curves. Regarding the instant claimed positioning system providing vertical and horizontal adjustment, as recited in instant claim 15, consider the positioning system of Nijenhuis, as modified, which includes the steering mechanism in the form of a horizontal pivot, similar to that of Coath, for horizontal adjustment and air springs 17 for vertical adjustment. As to Applicant's argument that the Nijenhuis does not include a positioning system for providing vertical and horizontal adjustments of the portable platform to maintain the same level, it is noted that Nijenhuis alone does not include the positioning system as claimed, but Nijenhuis, as modified in view of Coath,

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includes such horizontal pivot of Coath, and springs 17 that permit horizontal and vertical adjustments, respectively, and allow the platform to be maintained the same level, as broadly claimed.

Regarding the instant claimed intended uses, i.e. for permitting pedestrian traffic, providing pedestrian safety, and for providing access to vehicles running on a second track, note that since the structure of Nijenhuis, as modified, is inherently capable of the instant claimed intended uses, the instant claimed intended use limitations are considered met.

8. Claims 19 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied in claim 15 above and further in view of Fowler (US 2,190,708).

Regarding the instant claimed extendable ramp, as recited in instant claim 19, consider the extendable ram of Fowler. In view of Fowler, it would have been obvious to one skilled in the art to also include extendable ramps, similar to that of Fowler, on the structure of Nijenhuis so as to allow the platform to bridge gaps in situations where a permanent platform, similar to that shown in Figure 2 of Fowler, is located at a distance from the traveling platform.

Regarding the instant claimed railings, as recited in instant claims 22-23, consider Figure 5 of Fowler; wherein, the ramps of Nijenhuis, as modified, are positioned vertically as railings as required by the instant claims.

9. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied in claim 15 above and further in view of Hogue (US 4,224,880).

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Regarding the instant claimed platform including planks, as recited in instant claim 20, consider railcar floor of Hogue, which is formed by planks. In view of Hogue, it would have been obvious to one skilled in the art to form the platform (floor) structure of Nijenhuis by using planks, in a manner similar to that taught by Hogue, so as to achieve the expected advantages thereof.

10. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied in claim 15 above and further in view of Farmer (US 1,980,329).

Regarding the instant claimed braking system, as recited in instant claim 25, it is noted that Nijenhuis does not show a braking system; however, braking system for use in a rail traveling structure is well known. Note for example, the rail wheel brake system shown in Farmer. Therefore, it would have been obvious to one skilled in the art to include a braking system, as for example shown in Farmer, in the structure of Nijenhuis so as to perform the expected braking function thereof.

11. The above grounds of rejection are considered to include examiner's responses, either directly or indirectly, to Applicant's relevant points of arguments.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not


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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 571-272-6682. The examiner can normally be reached on Mon-Fri, between 9AM-3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mark T. Le
Primary Examiner
Art Unit 3617

mle
8/13/07